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QUESTIONS OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the former Yugoslavia

Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia

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Executive summary

The present report is submitted by Mr Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia. The report covers developments in the area of the Special Rapporteur's mandate until the first week of December 1999 and is based on information gathered by field offices of the Office of the High Commissioner for Human Rights (OHCHR).

I. BOSNIA AND HERZEGOVINA

The Special Rapporteur concludes that, unfortunately, another year has passed with no significant progress to report on respect for human rights and the rule of law. The main reason for this situation continues to be deliberate obstruction by those who hold power in Bosnia and Herzegovina.

The Special Rapporteur's main areas of concern include the role of the police in ensuring protection of human rights. Despite the efforts of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to restructure local police, police forces remain mono-ethnic in most areas and their effectiveness in crime detection, investigation and response remains low. Police moreover are reluctant to implement court decisions not in accord with the politics of local majority groups.

The lack of a functioning and independent judiciary is another major concern of the Special Rapporteur. Interference of political power structures in the judicial system remains strong. This has been shown in the starkest terms by the almost total failure to implement property laws in either entity.

Overall, security concerns continue to be the main factor hindering returns to most parts of the country. Other major factors are lack of employment opportunities and discrimination. The Special Rapporteur welcomes the tough new approach taken by the High Representative, imposing legislation, removing from public office the main obstructionists, and sending a strong message to the leaders of the country as well as to all citizens. While it is too early to say whether this will bring results, he maintains that it is vital to keep up the pressure now that momentum has been generated.

II. REPUBLIC OF CROATIA

The Special Rapporteur's report focuses mainly on the issues of refugee returns and war-crimes trials. He expresses concern over the low number of returns, which he attributes in part to lingering post-war inter-ethnic tensions and the damaged economies and infrastructure in the areas of return. However, he also calls attention to obstacles for which the Government can be held directly responsible, including discriminatory and deficient legislation, lack of concern at both the State and local levels, and the lack of accessibility, efficiency and enforcement of judicial remedies.

Concerning war-crimes trials, the Special Rapporteur states that unreasonable delays in war-crimes prosecutions and doubts as to their fairness, as well as a lack of transparency in new indictments, have reinforced the belief on the part of the Serb population that they are being targeted by the Government on account of their ethnicity. He urges that all war crimes be investigated and tried in accordance with international standards, and that perpetrators of war crimes be brought to justice regardless of their ethnic background.

The Special Rapporteur draws particular attention to the scant resources allocated to the judiciary and to the burden of unresolved cases. He states that delays and non-enforcement of court rulings should be of primary concern to the Government of Croatia. He emphasizes that an independent and effective judiciary is synonymous with the rule of law.

III. FEDERAL REPUBLIC OF YUGOSLAVIA (FRY)

Since most of the Special Rapporteur's recent report to the General Assembly was devoted to the situation in Kosovo, FRY, he is taking the opportunity of the present report to focus on issues not immediately related to the Kosovo crisis, but nonetheless crucial to his mandate. He notes that international efforts to avert the looming humanitarian crisis caused by the destruction of FRY's civilian infrastructure have been for the most part limited and politicized. He notes the arrival of the first fuel trucks in the European Union's "Energy for Democracy" programme, but observes that fuel shortages continue throughout FRY, disrupting food and water supplies and preventing the operation of essential equipment. Humanitarian agencies fear increased suffering of the most vulnerable, particularly refugees, internationally displaced persons, the disabled, children, the chronically ill, urban elderly and social cases.

The Special Rapporteur also calls attention to the FRY population's increasing economic hardship, generated in part by the country's long-term economic decline and lack of reform, and worsened as a result of sanctions and the extensive damage to infrastructure and industry caused by the air campaign of the North Atlantic Treaty Organization (NATO).

The Special Rapporteur expresses serious concern about increasing incidents of violations of freedom of expression throughout FRY, particularly in the Republic of Serbia. In Belgrade and in Pristina, selected media have embarked on crusades against independent journalists, while access to a range of information is severely restricted in several additional ways.

The Special Rapporteur makes particular reference to criminal proceedings under way throughout FRY with serious implications for human rights. He expresses grave reservations about the conduct of many proceedings. He recommends that the Government of FRY, including the republics of Serbia and Montenegro, should permit access by OHCHR and the

International Committee of the Red Cross (ICRC) to places of detention, and should improve their performance in conforming judicial proceedings with international standards of due process. He further urges the authorities to take measures to end torture and ill-treatment of those in prisons.

The Special Rapporteur calls upon the international community to cease isolating the people of FRY. In particular he urges that bilateral civil society connections be multiplied and that non-governmental organizations in countries outside FRY establish links with counterparts inside the country.

Introduction

1. The present report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights, considers events occurring in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia until the first week of December 1999. The report is based on information gathered from a wide range of sources by field offices of the Office of the High Commissioner for Human Rights (OHCHR). The Special Rapporteur would like to thank all those individuals and organizations which have supported his mandate since he assumed his position in March 1998. In particular, he would like to pay tribute to the OHCHR human rights field staff, both internationally and nationally recruited, who have demonstrated great dedication to the protection and promotion of human rights, and who conduct their work in often difficult circumstances. The Special Rapporteur also wishes to express his gratitude to the Governments which have provided financial support to OHCHR and enabled him to exercise his mandate effectively.

I. BOSNIA AND HERZEGOVINA

2. The Special Rapporteur briefly visited Bosnia and Herzegovina in April 1999, focusing on the impact of the Kosovo crisis in discussions with representatives of civil society and international organizations in Sarajevo. From 15 to 20 May 1999 he undertook a more extensive mission to the country, travelling mainly in the Republika Srpska (RS), with visits to Banja Luka, Brcko, and Bijeljina. He met with local authorities and civil society representatives, as well as representatives of human rights institutions and international organizations, in order to get a full picture of the human rights situation. In addition the Special Rapporteur receives information on the human rights situation on a regular basis from the OHCHR field operation in Bosnia and Herzegovina, based in Sarajevo.

A. General observations

3. In his last report to the Commission on Human Rights (E/CN.4/1999/42), the Special Rapporteur stated that Bosnia and Herzegovina remained divided along ethnic lines and that substantial rights violations were continuing, in particular violations of the rights to property and to return. Unfortunately, another year has passed with no significant progress to report on respect for human rights and the rule of law. The main reason for this unsatisfactory situation continues to be deliberate obstruction by those who hold the power in Bosnia and Herzegovina.

4. The Special Rapporteur would like to commend the approach taken by the High Representative, Wolfgang Petritsch, in an attempt to overcome this obstruction. In October 1999 the High Representative imposed new property legislation, which was intended to eliminate most obstacles to the implementation of property laws in both entities. As a sign of the new resolve of the international community, on 29 November the High Representative, in concert with the head of mission and the Organization for Security and Cooperation in Europe (OSCE), dismissed 22 officials, all of whom had made a practice of obstructing implementation of the Dayton Agreement in various ways. While it is too early to say whether these actions will lead to improved implementation of the Dayton Agreement and respect for the rule of law, the message sent to obstructionist officials was clear: the international community will no longer tolerate

such behaviour. The response from the public was generally positive. Not surprisingly, some of the officials who were removed objected to the decision, but overall reactions from the leading parties were rather muted.

B. Human rights situation

5. The Special Rapporteur submitted a comprehensive report to the General Assembly (A/54/396-S/1999/1000) on 24 September 1999 as well as an addendum to that report (A/54/396/Add.1-S/1999/1000/Add.1) on 3 November 1999. As only one month has passed since then, the present report will build upon previous submissions rather than repeat them.

6. The Special Rapporteur has outlined his major areas of human rights concern in Bosnia and Herzegovina, emphasizing the role of the police, as agents of the State, in ensuring the effective protection of human rights. Despite the efforts of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to restructure the local police, police forces remain mono-ethnic in most areas and their effectiveness in crime detection, investigation and response remains low. The police moreover remain reluctant to implement court decisions not in accord with the politics of the local majority ethnic group. Police reform in both entities suffers from a lack of genuine political will.

7. The lack of a functioning and independent judiciary has been another major concern highlighted by the Special Rapporteur. The interference of political power structures in the judicial system remains strong. This has been shown in the starkest terms by the almost total failure to implement property laws in either entity.

8. Overall, security concerns continue to be the main factor hindering return to most parts of the country. Other major factors in the low rate of minority returns are lack of employment opportunities and discrimination. Authorities at all levels have failed to create conditions conducive to sustainable returns.

C. Right to return and to property

9. Four years after the Dayton Agreement was signed, it is estimated by the Office of the United Nations High Commission for Refugees (UNHCR) that up to 830,800 people (487,300 in the Federation and 343,500 in the Republika Srpska) remain displaced in Bosnia and Herzegovina, while 324,100 refugees remain in host countries in Europe and elsewhere without durable solutions. Many still wish to return to the properties they occupied prior to the war, but return has been made difficult by complicated property laws that have not been implemented and by the difficult economic, security and political realities facing those who would now be part of ethnic minorities in their pre-war communities.

10. The Special Rapporteur has been offered a range of reasons and excuses by different authorities when he has inquired why returns were not happening. In addition to those already mentioned, he has often heard the claim that people in fact do not want to return. A survey conducted by UNHCR and the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), made public in November 1999, provides useful insight into the real wishes and intentions of Bosnian refugees and displaced persons.

11. More than 3,000 interviews were conducted throughout Bosnia and Herzegovina as well as in Croatia and the Federal Republic of Yugoslavia. Respondents were requested to identify how they would prefer to exercise their property rights, and what factors (legal, socio-economic or political) influenced their preferences. The survey confirmed that a large proportion of refugees and displaced persons - 61 per cent of all respondents - still wish to return to the properties they occupied prior to the war. In Bosnia and Herzegovina itself, 76 per cent of respondents currently residing in the Federation of Bosnia and Herzegovina and 34 per cent of those currently residing in RS would prefer to return to their pre-war properties, 76 per cent of all Bosniak respondents, 73 per cent of Croats, and 36 per cent of all Serbs indicated a preference to return to pre-war properties.

12. One of the main barriers to return identified by respondents was personal security and security of their property. The majority of all respondents who indicated a preference to sell, exchange or lease their properties said that they would return if local authorities guaranteed their safety.

13. At the same time, there is also a large group of displaced persons and refugees who do not wish to return, but instead would prefer to integrate into communities in which they have been resettled, in some cases for periods of up to eight years. These people will need to be provided with adequate information on their rights so that their interests can also be adequately protected.

14. Violence targeting returnees and/or their property continued during the reporting period and remains an obstacle to return in many areas of the country. However, there has been some improvement compared to the situation in previous years. The number of incidents overall has decreased and, in particular, in most urban areas security is not a major obstacle. But in some parts of the Republika Srspka and in Bosnian Croat-controlled municipalities in the west of the country, returnees and/or their property have continued to be targets of violent attacks. Local police in most cases have failed to take preventive measures and the perpetrators of crimes are hardly ever arrested or prosecuted.

15. In October and November 1999 there were a few security-related incidents reported and in some return locations, tensions were on the rise. For example, in Kopaci and Srpsko Gorazde (RS), some 50 displaced persons camped with tractors at the Inter-Entity Boundary Line (IEBL) after local authorities denied them access to their properties. The Mayor of Srspko Gorazde was one of the local officials dismissed by the High Representative and the OSCE head of mission on 29 November, for "consistent and uncompromising obstruction of return to Kopaci-Srpsko Gorazde and failing to respond in a responsible manner to a crisis in returns in the region." In Gacko (RS), on 1 December, four persons were injured when a mine exploded under their car as they were travelling to a minority return site. According to the International Police Task Force (IPTF), it appears the incident was a deliberate attempt to deter returns.

16. On 27 October, the High Representative imposed the comprehensive amendments to property laws in both entities which harmonized the legislation between the entities and provided authorities with detailed instructions on the application of property and housing legislation. There is now rough legislative equality between the entities. At the same time, several new

provisions were introduced, one of which defines "multiple occupants" and obligates authorities to take immediate action to evict occupants without lawful claims to the properties where they reside. Fines have also been introduced for those who fail to comply with eviction orders as well as for administrative bodies that fail to implement the law, including eviction provisions. There has, however, already been some resistance to the new laws, such as reluctance to execute evictions during the winter.

D. Economic, social and cultural rights

17. Discrimination on the basis of ethnicity, political opinion and gender remains endemic in Bosnia and Herzegovina. It has been highlighted recently by the Human Rights Chamber as "one of the most severe problems for the return of refugees and displaced persons." There is a continuing failure to re-hire members of ethnic minorities or political opposition groups who were dismissed during the war. There has also been ongoing exclusion of women from employment in favour of demobilized soldiers, and extensive discrimination against teachers from minority ethnic groups. The major obstacle to addressing employment discrimination is the weak rule of law and the lack of legal remedies. Discrimination is perpetuated by the continued strength of the nationalist political parties which control most aspects of economic life in Bosnia and Herzegovina.

18. On a positive note, on 5 October 1999 a new Federation Labour Law was adopted containing a non-discrimination provision (art. 5) which states: "A person seeking employment, as well as a person who becomes employed, shall not be discriminated against based on race, colour, sex, language, religion, political or other opinion, national or social origin, financial situation, birth or any other circumstances, membership or non-membership in a political party, membership or non-membership in a union, and bodily or mental problems." However, the text preserves strict deadlines (two weeks from awareness of a violation) for filing claims with administrative and legal bodies for alleged violations, leaving little margin of time for employees to react.

19. Discrimination against women in employment, in the form of non-payment of maternity-leave benefits, has been reported in both entities. In the Federation, women are entitled to one year of maternity leave, to be paid for by the cantons, but the required cantonal legislation is not in place (with the exception of Sarajevo canton). In RS, where women are also entitled to one year of maternity leave, there is evidence that women who become pregnant as well as new mothers frequently are dismissed from their jobs. It may be argued that non-payment of maternity leave entitlement violates international human rights standards, including article 10 of the International Covenant on Economic, Social and Cultural Rights, which provides that paid leave or leave with adequate social benefits should be provided to new mothers. The current practice also violates the federal Constitution as well as those of the two entities.

E. Trafficking of persons

20. Trafficking of persons for the purpose of forced prostitution has emerged as a major human rights concern in Bosnia and Herzegovina. Of particular concern is the fact that local police until recently have focused more on offences allegedly committed *by* women than on

offences committed *against* them. Deportations from the cantons or across the IEBL have been carried out in a manner that has put women at further risk of abuse. In response to these concerns, in August 1999 the IPTF Commissioner issued an interim directive providing guidance for police operations against premises where it is suspected that procurement of prostitutes is organized.

21. Following that, on 29 October the High Representative issued a Decision on Trafficking and Deportation, effectively extending the 30 August interim directive issued by IPTF. The Decision requires that any decisions regarding deportation of foreigners should be taken in consultation with IPTF, and is intended to ensure appropriate treatment of persons who are threatened with deportation, particularly those who are victims of trafficking. The Decision is in part a response to the failure of the House of Representatives to adopt a law on immigration and asylum, which would enable the country to address the issue of deportation in a manner consistent with international law.

22. Despite the failure to adopt adequate legislation including criminal law provisions addressing trafficking, there has been some progress made with regard to State responsibility. Authorities at the State level have indicated their willingness to address some aspects of victim protection, including by providing shelter. Local non-governmental organizations have also shown willingness to provide services for the protection of victims.

F. Freedom of expression

23. On 22 October Zeljko Kopanja, editor-in-chief of Nezavisne Novine, based in Banja Luka, sustained grave injuries resulting in the amputation of both his legs from a bomb explosion in a parking lot. Mr. Kopanja had been the subject of threats since at least August 1999, when Nezavisne Novine became the first newspaper in the Republika Srpska to publish accounts of wartime atrocities committed by Serb forces. On 3 November, journalist Mirko Srdic, a correspondent for TV Bosnia and Herzegovina and the BETA news agency, was physically assaulted and threatened, allegedly by the present mayor of Doboj. The assault followed two stories aired by TV Bosnia and Herzegovina, which cast the political party SDS Doboj and the mayor in an unfavourable light.

24. The assassination attempt against Mr. Kopanja and the assault on Mr. Srdic represent the continuation of an alarming trend of violence and threats aimed at undermining the development of a free and independent media throughout Bosnia and Herzegovina, particularly in the Republika Srpska.

G. Missing persons

25. The Special Rapporteur welcomed the release in November 1999 of the report of the Secretary-General on the fall of Srebrenica (A/54/549). Concerning missing persons, the total number for whom family members have opened a tracing request in Bosnia and Herzegovina is, according to ICRC, 20,286. The total number for whom family members opened a tracing request following the fall of Srebrenica alone is 7,423. It is presumed that most of these persons are dead. More than 4,300 bodies have been exhumed and identified in the country since April 1996.

26 Since its commencement in November 1997, the Joint Exhumation Process, led by the office of the High Reprentative (OHR), has encountered fewer and fewer problems in all areas, regardless of who exercises control Exhumations have been conducted by the parties themselves It may be noted that even in spring 1999, during the military operation by the North Atlantic Treaty Organization (NATO) against FRY, exhumations continued to be carried out even in RS According to OHR, cooperation between the three sides has improved, with a joint commission on missing persons established in the Federation The result is that, as of the end of November, the three sides had worked at over 500 locations during the year As the exhumations were just being ended for the winter at the time of writing statistics had not yet been compiled, but at least 2,000 bodies had been exhumed According to the OHR coordinator, cooperation between the three sides and international organizations has been excellent The exhumations have been monitored by OHR, Physicians for Human Rights and ICRC (the latter two are also providing expertise in identification and in clarification of the fate of the missing) Of particular concern to the Special Rapporteur is the precarious situation of the many families with missing relatives Many of these families are themselves displaced and headed by women, in many cases without any surviving male members of the household

H Conclusions and recommendations

27 The Special Rapporteur is once again obliged to conclude that there has been little fundamental change in the situation of human rights in Bosnia and Herzegovina Public officials and political leaders have perpetuated the results of past population displacements by obstructing returns and undermining the rule of law, particularly in the area of property rights Discriminatory practices in all areas, including employment and education, continue to flourish

28 The Special Rapporteur welcomes the tough new approach taken by the High Representative, imposing legislation, removing from public office the main obstructionists, and sending a strong message to the leaders of the country as well as to all citizens While it is too early to say whether this will bring results, it is vital to keep up the pressure now that momentum has been generated Many good initiatives of international representatives in the past have failed owing to lack of systematic and long-term follow-up

29 The Special Rapporteur stresses that the transition of Bosnia and Herzegovina to a democratic State built on respect for the rule of law will be a long-term process International assistance to the country will be needed for a long time to come

30 The importance of reforming the police and the judiciary to improve respect for human rights cannot be overestimated Such reform will not happen, however, without the political will and commitment of local authorities, which so far has not been forthcoming

31 The Special Rapporteur notes that four years after the Dayton Agreement, the number of minority returns is still exceedingly low However, large numbers of refugees and displaced persons still express their wish to return to their pre-war homes There must be several approaches to assist them to do so The regional approach must be advocated strongly, as many refugees are living within the region Political opposition to returns must be overcome, which

may require further removals from office of public officials. Respect for the rule of law, in particular in the area of property rights, is critical to making sustainable returns possible.

32. The Special Rapporteur urges that combating discriminatory practices, including in the areas of economic and social rights, be accorded the highest priority. Particular attention should be paid to gender aspects of discrimination, especially in the restructuring and training of law enforcement agencies and the judiciary.

II. REPUBLIC OF CROATIA

A. Introduction

33. The present report considers human rights developments in Croatia from mid-March to early December 1999. It focuses on the issues of refugee returns and war-crimes trials, drawing on information culled and analysed by OHCHR staff in Zagreb. In light of the changing political scene in Croatia, with the new interim President calling for parliamentary elections in January 2000, the Special Rapporteur intends to provide an update on the situation to the Commission on Human Rights when it meets in Geneva in March/April 2000.

34. The Special Rapporteur wishes to reiterate his appreciation to the authorities of the Republic of Croatia for their full cooperation with the OHCHR Office in Zagreb and for their continuing assistance in the implementation of his mandate.

B. Returns

35. The Programme for the Return and Accommodation of Displaced Persons, Refugees and Resettled Persons, endorsed by Parliament on 26 June 1998 (hereinafter "the Return Programme"), has regulated the return of refugees and internally displaced persons (IDPs) to and within the Republic of Croatia over the past year. According to the Government, 18,271 ethnic Croat IDPs had returned to the Danube region by the end of November 1999. However, only 8,773 - a surprisingly low number - of an estimated 300,000 ethnic Serb refugees had returned to Croatia from FRY, Bosnia and Herzegovina and other countries. The Special Rapporteur expresses his concern once again at the slow pace of return of Serb refugees to Croatia.

36. The process of return is not simple. The reasons for the low number of returns include lingering post-war inter-ethnic tensions, the damaged economies and infrastructure in the areas of return, the slow progress of reconstruction, and the unwillingness of the Government to provide alternative accommodation in which to resettle those who are using the property of ethnic Serbs. The obstacles to return, for which the Government can be held directly responsible, are to be found in the following areas: discriminatory and deficient legislation, apparent unconcern at both the State and local levels, and the lack of accessibility, efficiency and enforcement of judicial remedies.

37. An important deficiency in the Government's legislative protection of the right to property is its failure to recognize and compensate the involuntary loss of occupancy rights of those citizens who were forced to flee from their socially owned apartments because of the conflict. The Special Rapporteur firmly considers this widespread loss to be the result of the

conflict, and not voluntary abandonment, as the Government contends. At the same time, the decisions on occupancy rights issued by the defunct, so-called Republika Srpska Krajina (RSK) have not been considered, and their effects on Serbs' rights to housing and due process are non-existent. Many ethnic Serbs living outside the formerly Serb-controlled regions of Croatia have lost their occupancy rights to socially owned apartments, often by force and regardless of the many court cases which have been brought over the years. Of these cases, the Special Rapporteur has heard of only a few in which illegal property seizures were remedied.

38. At the time of writing, the Croatian Parliament had been dissolved in preparation for new elections in early 2000. Despite promises and proposals, the Government has yet to honour its obligation to repeal or amend discriminatory legislation, particularly the three laws which bestow greater rights on ethnic Croats: the Law on the Status of Expelled Persons and Refugees, the Law on Reconstruction, and the Law on Areas of Special State Concern.

39. Potential beneficiaries of the Return Programme suffer from its unclear legal status, especially in regard to their access to legal remedies. For instance, most individuals are prohibited from lodging cases for property restitution and instead must have Housing Commissions do so as their agents. However, regardless of recent efforts to standardize court practices, some ethnic Croats returning to the Danube region bypass the Housing Commissions and successfully appeal to the courts, thus accessing a remedy which is unavailable to ethnic Serbs, for example in the Krajina region. There are only a few cases in which the courts have protected the property rights of Serbs whose houses are occupied by ethnic Croats.

40. For many Serbs, obtaining citizenship remains a difficult process. Besides slowing and deterring returns, the process has also reduced the number of Serb refugees in Bosnia and Herzegovina and FRY who will be able to vote in the January 2000 elections. Those who have appealed negative decisions on citizenship have waited years, and most are still waiting, for administrative courts to issue decisions. However, those citizens who have proper documentation have been able to quickly obtain a putni list, or travel document, allowing them to enter Croatia where they are then able to obtain further documentation. The Government and UNHCR are conducting regular "go-and-see" visits to areas of return, and the Special Rapporteur hopes that these trips will continue.

41. Some municipal authorities dutifully implement the Return Programme. However, the work of many Housing Commissions (the local bodies established to administer the restitution of property taken over during the conflict) is hampered by administrative delays and intentional obstructions. The Government Commission on Return, the central authority for the Return Programme, has generally not responded to the many requests for alternative accommodation by local Housing Commissions. In a few communities, however, the Agency for Mediation in Real Estate Transactions (APN) has supported the return of ethnic Serbs by providing alternative accommodation. The Special Rapporteur hopes that these positive examples will become more frequent and stimulate much-needed enthusiasm and a financial commitment equal to that shown towards recent ethnic Croat refugees arriving from Kosovo. It must be emphasized that the contrast between the treatment of Croat refugees from Kosovo and Croatian citizens of Serb ethnicity currently taking refuge in FRY and Bosnia and Herzegovina is striking.

C. War crimes

42. Unreasonable delays in the proceedings of war-crimes prosecutions in national courts and doubts as to their fairness, as well as a lack of transparency in new indictments, have reinforced the belief on the part of the Serb population that they are being targeted by the Government on account of their ethnicity. This has, to a great extent, contributed to more departures from the Danube region. As has frequently been noted by the Special Rapporteur, the adoption of the 1996 Amnesty Law was a positive step towards reconciliation, but ambiguities and uncertainties regarding the Law's application continue to exist. In the meantime, a number of war crimes cases remain unresolved.

43. The so-called "Sodolovci Group" case - extensively reported on by the Special Rapporteur to both the Commission on Human Rights and the General Assembly - continues to receive the attention of the public and international representatives in Croatia. As indicated in his latest report to the General Assembly, the County Court of Osijek concluded on 27 May the retrial of five individuals from the village of Sodolovci on charges of war crimes against the civilian population. The Court confirmed the previous verdict (pronounced in absentia), with the exception of one case of a defendant whose sentence had earlier been reduced. The other four individuals had their sentences - ranging from 11 to 15 years - confirmed. OHCHR has followed the case closely and has regularly monitored the proceedings.

44. In his report to the General Assembly, the Special Rapporteur expressed concern that the trial did not meet international standards, particularly as regards the burden and standard of proof. At no time during the proceedings was sufficient credible evidence adduced by the prosecution to substantiate a charge of war crimes. Nor was it established beyond reasonable doubt that the defendants had committed the crime with which they were charged. Additional doubts were raised regarding the impact of statements by public officials regarding the case which, according to some observers, were meant to influence the Court's ruling. As reported by the media in Croatia, the Minister of Justice visited the Court a day before the verdict and, after meeting with all the judges, made a public statement suggesting the guilt of the accused persons. The Special Rapporteur notes that the outcome of the case, which was also followed closely by the Serb population in Croatia - particularly in the Danube region - was perceived as sending a clear message to the Serb population regarding their prospects for enjoying protection of the rule of law.

45. The Special Rapporteur was informed that two weeks prior to the Supreme Court's hearing of the appeal, the prefect of Osijek-Baranja County stated in an interview that the verdict in the Sodolovci case was politically motivated, attributing responsibility to the President of the County Court, who subsequently offered his resignation to the State Judiciary Council. The appeal to the Supreme Court was heard on 24 November and, in a brief procedure, the Court ordered a retrial at the first instance court because of serious procedural mistakes during the trial. The five members of the group were released from detention.

46. The trial of a group of Croatian former reserve policemen, known as the Pakracka Poljana group, ended in Zagreb County Court on 31 May. The defendants were charged with the harassment of several Serbs and the murder of one of the members of their unit in 1991. In 1996, one of the accused confessed in an interview with the weekly Feral Tribune that,

together with other reservists, he had killed 72 Serbs. Charges against four defendants in the case were dismissed, allegedly for lack of evidence and because of what the court considered to be contradictory testimony of witnesses. Another two were sentenced to one and two years in prison, respectively. The Special Rapporteur has expressed his concern over the conduct of these proceedings, partly in view of reports by OHCHR staff monitoring the trial that various witnesses, who had clearly been intimidated, claimed on the witness stand that they had forgotten everything relating to key facts of the case.

47. The level of cooperation of Croatian authorities with the International Criminal Tribunal for the Former Yugoslavia (ICTY) remains a major concern of the Special Rapporteur. Croatian authorities have been accused by the former Chief Prosecutor and the former President of ICTY of delaying action on some key matters, such as requests from the Tribunal for assistance with its investigations of crimes committed by the Croatian army during the 1995 army operations "Flash" and "Storm" and their aftermath. With regard to Croatia making good on its commitments to extradite those indicted by ICTY, the Special Rapporteur commends the transfer of Vinko Martinovic ("Stela") to The Hague and - in the case of Mladen Naletilic ("Tuta") - supports the 21 October ruling of the Constitutional Court upholding the extradition of the accused to ICTY, and expects that Mr. Naletilic will be transferred as soon as his health permits.

48. The Special Rapporteur considers that due process was respected in the trial of the Second World War concentration camp commander Dinko Sakic, charged with crimes against humanity in the Zagreb County Court. On 4 October Mr. Sakic was sentenced to the longest possible term of 20 years in prison.

49. The Special Rapporteur's attention has been drawn to the retrial of Mirko Graorac, an ethnic Serb, in the Split County Court. The trial, originally scheduled for 27 September, was postponed until 17 January 2000. At the first trial in April 1996, the Court found Mr. Graorac guilty of committing crimes against prisoners of war and the civilian population in Manjaca, a prison camp in Bosnia and Herzegovina. Both international and local observers, as well as defence lawyers, noted deficiencies in respect of international fair trial standards. For instance, statements allegedly obtained through torture were admitted as evidence in the trial. There was also a general paucity of evidence of the alleged crimes. The Supreme Court, in February 1998, returned the case to the Split County Court for retrial, but only with respect to the fact that some witnesses had testified that they had been soldiers in active service with the Croatian army when they were taken prisoner in Bosnia and Herzegovina in early 1992. The Supreme Court stated that the acceptance by the Court of those facts could have "far-reaching consequences for Croatia", presumably because it incriminated Croatia in the war in its neighbouring country. Mr. Graorac has been in detention since April 1995.

50. A hunger strike by 19 prisoners of Serb ethnicity in Osijek County prison began on 18 October, initiated by a group of prisoners indicted or convicted of war crimes. The prisoners' main concern, according to information obtained by OHCHR, is that their trials have not met basic standards of fairness. One of the inmates, Ivica Vuletic, has spent 7½ years in detention and is still awaiting the decision on his second appeal to the Supreme Court. Two indictees from the so-called Dalj Group, Vaso Gavrilovic and Dragoljub Savic, arrested in January 1999 and visited by the Special Rapporteur one month later, are still awaiting their first

main hearing. The Special Rapporteur notes that among the initiators of the hunger strike were members of the so-called Sodolovci Group who have, meanwhile, been released from prison.

51. The Dubrovnik County Court will, on 8 December, start the trial of Dejan Subotic, a FRY citizen arrested on 1 September at Dubrovnik airport. He was originally charged with looting in the vicinity of Dubrovnik in 1991, as a volunteer with the Yugoslav National Army (JNA). After he was released on bail he was immediately rearrested on charges of war crimes against civilians - in accordance with article 158 of the Croatian Penal Code - for "large-scale looting and intimidation of civilians in the occupied territory by inhumane treatment in the form of physical torture and evacuation to concentration camps". The Special Rapporteur was informed that the lawyer of the accused has claimed that there were anomalies in the identification procedure, which might serve as major evidence in the trial.

52. A Croatian Serb was arrested in Benkovac on 3 November on suspicion of having participated in the killing of a Croatian soldier on 23 January 1993 in the Maslenica operation of the Croatian army while serving in a Serb paramilitary unit. The suspect, Vladimir Marcic, reportedly shot at a Croatian army vehicle killing a soldier, Miljenko Zoric. Upon intervention by international police monitors, Mr. Marcic was released, with the explanation by an investigating judge that it could not be proved that Mr. Marcic was involved in the shooting and that the action - shooting at a military vehicle near the front line during a military operation - fell under the general amnesty for war-related activities. The case was closed for further investigation and prosecution. However, some local media have given sensational coverage to the case, publishing articles dominated by hate speech, pictures of the Croatian soldier's grave and interviews with his parents and neighbours saying that the deceased's father wished to obtain justice for his son himself. Mr. Marcic is reportedly now in hiding, awaiting his passport to leave Croatia. The Croatian Helsinki Committee for Human Rights (HHO) referred to Mr. Marcic's case as a deterrent to the return of Croatian Serbs.

D. Administration of justice

53. Court decisions that would result in the eviction of ethnic Croat occupants from the properties of ethnic Serbs are rarely enforced. Some of those who previously held occupancy rights to socially owned apartments in Split, for example, have waited for years and - at least in one case - through at least seven attempted evictions.

54. Progress in Croatian courts continues to be impeded by an enormous backlog of cases. The Special Rapporteur believes there has been little improvement since the last report of the former Minister of Justice, which noted over 1 million unsolved cases. The Government of Croatia has yet to introduce an effective solution to this difficult problem which, along with the court fees that place judicial remedies out of reach of returnees and many other Croatian citizens, jeopardizes the public's faith in the judicial system. The Special Rapporteur calls attention to continuing judicial vacancies, such as in Korenica, although he notes some progress, for example in nearby Donji Lapac, where a judge has finally been appointed.

E. Freedom of expression and information

55. Representatives of the "Opposition Six" - comprising the Croatian Social Liberal Party (HSLS), the Croatian Peasant Party (HSS), the Social Democratic Party (SDP), the Istrian Democratic Assembly (IDS), the Liberal Party (LS) and the Croatian People's Party (HNS) - claim that in several ways, the ruling Croatian Democratic Union (HDZ) party continues to receive an unfair advantage in news reporting on Croatian State Radio and Television (HRTV). They cite a 27 November 1999 news broadcast of a press conference organized by the ruling party, saying that it was presented differently - in both content and duration - from a similar conference held the same day by the Opposition Six.

F. Missing and detained persons

56. In what the Special Rapporteur sees as a positive step, the Government on 26 November confirmed two ethnic Serb candidates nominated by the Joint Council of Municipalities (JCM) to be members of the Danube Region Subcommission on Missing and Detained Persons. Following this tangible development - after over a year of international pressure - the Special Rapporteur hopes that the Subcommission will meet as soon as possible and begin the process of tracing, at the local level, those who disappeared in the 1991-1995 war and its aftermath.

57. Despite the Special Rapporteur's calls for strengthened cooperation among all parties concerned with progress in resolving cases of those gone missing from 1991 to 1995, the exchange of information between the Croatian Government Commission on Missing and Detained Persons and its FRY counterpart has, again, reached an impasse. The next meeting of the bilateral commission was almost certain to be postponed until after the general election in Croatia in January 2000.

G. Labour rights

58. The Special Rapporteur welcomes the Constitutional Court's decision overturning the Zagreb city ordinance prohibiting demonstrations in the city's main square. It is hoped that workers' rights to freedom of association, assembly and expression will be further protected.

59. The Special Rapporteur expresses concern for the many Croatian workers who receive their salaries late, if at all. Trade unions estimate that over 100,000 workers are affected, some of whom work in State-owned companies. In some cases employees work without salaries or payments into their pension or health plans. Workers are without effective means for securing their wages as they are not legally protected when striking for non-payment, and legal remedies are ineffective because of judicial inefficiency and the ability of employers to declare bankruptcy during hearings, thus avoiding their obligation fully to remunerate employees regardless of the trial's outcome.

H. Technical cooperation

60. The Special Rapporteur again commends the signing of the Technical Cooperation Agreement between the Office of the High Commissioner for Human Rights and the

Government of the Republic of Croatia in May 1999. The agreement provides for a variety of capacity-building activities, including dissemination of documentation and training on human rights standards for military, police and prison officials, training and advice for government officials in reporting obligations, training and advice for non-governmental organizations, advice on developing curricula for human rights education, advice and assistance to the Ombudsman's office, and establishment of a Human Rights Documentation Centre. In addition, after agreement with the Government, OHCHR in summer 1999 conducted a human rights summer school for law students of the four law faculties in Croatia (Osijek, Rijeka, Split and Zagreb). The seminar was evaluated as highly successful and received coverage both in the electronic and print media.

61. Thus far, the Office has also conducted seminars for the military on international human rights and humanitarian law standards, as well as for government representatives on reporting obligations. The Special Rapporteur urges the Government to meet all its reporting obligations that are still outstanding.

I. Conclusions and recommendations

62. The Government should finally devise a system of compensation to resolve the problem raised by the wartime law abolishing occupancy rights and the dubious application of this law. Furthermore, the Government should fulfil its promise to repeal or amend discriminatory property legislation.

63. The Special Rapporteur urges the Government to undertake a more earnest campaign to foster returns of ethnic Serb refugees and to undertake reconstruction and economic revitalization projects that benefit all ethnic communities. He further urges the Government to clarify, strengthen and expedite the legal remedies that are available to citizens who are deprived of the full benefits of either the return or reconstruction programmes.

64. The Special Rapporteur recommends that the Government continue to increase resources allocated to the judiciary in order to alleviate the burden of unresolved cases. He welcomes educational programmes for new Croatian judges. Furthermore, he recommends that all judges and prosecutors be trained in international human rights instruments that the Republic of Croatia has ratified. Delays in - and lack of enforcement of - court rulings should be of primary concern to the Government, and the Special Rapporteur recommends that steps be taken to guarantee the execution of court orders. The Special Rapporteur reminds the Government that an independent and effective judiciary is synonymous with the rule of law.

65. While appreciating the difficult challenge that the Government faces in revitalizing companies, such as those in the tourist industry, the Special Rapporteur notes that employees must either be guaranteed their salaries or effective legal remedies through which salaries can be claimed.

66. With regard to missing persons, the Special Rapporteur emphasizes once again that identifying the fate of the 1,668 persons still officially registered as missing is an urgent humanitarian problem facing Croatia, and calls for it to be dealt with as a matter of the highest priority. He has received unconfirmed reports of mass graves in the former United Nations

sectors South and North, with large numbers of ethnic Serbs reportedly buried there. The search for truth includes the urgent need to locate, guard and excavate these mass graves and to identify the mortal remains therein.

67. The Special Rapporteur again emphasizes that all war crimes must be investigated and tried in accordance with international standards, and that perpetrators of war crimes must be brought to justice. However, unreasonable delays in proceedings and doubts as to the fairness of trials, as well as a lack of transparency concerning new indictments, have resulted in a persistent sense among the Serb population that they are being targeted by the Government on account of their ethnicity. This has contributed neither to the goal of reconciliation nor to accountability for war crimes. It can also be considered as a significant deterrent to the return of Serb refugees to Croatia.

68. Finally, the Special Rapporteur would like to repeat his previous recommendation that future war crimes investigations and trials be undertaken with the participation of international representatives, thus ensuring transparency and a process that reassures the Serb population that war crimes prosecutions transcend victor's justice.

III. FEDERAL REPUBLIC OF YUGOSLAVIA

A. Introduction

69. Since submitting his last report to the Commission on Human Rights in early 1999, the Special Rapporteur has conducted four additional missions, together with OHCHR staff, to the Federal Republic of Yugoslavia: (a) 26-30 April 1999 to Montenegro, (b) 8-12 June 1999 to Vojvodina and central Serbia, (c) 7-12 July 1999 throughout Kosovo, and (d) 1-9 October 1999 to Belgrade, Nis, Kraljevo, Novi Pazar, Rozaje, Kosovska Mitrovica, Gnjilane, and Pristina. In April 1999, the Special Rapporteur conducted a special mission, drawing on the work of the OHCHR Kosovo Emergency Operation, to the former Yugoslav Republic of Macedonia to inquire into the situation of Kosovo refugees. The findings of all five missions were reported to the General Assembly in November 1999. The present report, prepared in early December, focuses on the situation of human rights in the last few months of 1999.

70. The tragedy of the Kosovo crisis has dominated news and human rights reporting from the region throughout 1999. Indicative of the gravity and massive number of human rights violations in that locale alone, OSCE in December 1999 released two reports, totalling 900 pages, on the situation of human rights in Kosovo since October 1998. Within the more limited constraints established by the General Assembly and the Commission on Human Rights, most of the pages allotted to the Special Rapporteur on developments throughout FRY have been necessarily devoted to Kosovo. At this writing, only a few weeks have elapsed since presentation to the General Assembly of the Special Rapporteur's report and addendum, which dealt almost exclusively with the Kosovo crisis. The Special Rapporteur therefore takes the opportunity of the present report to focus on issues not immediately or exclusively related to the Kosovo crisis, but nonetheless crucial to his mandate and the situation of human rights in the region. Given the pace of developments throughout FRY, particularly in relations between and among its republics, provinces and regions, it is possible that elements of this report will have been superseded by events before the document is published. Simultaneous with the

presentation of this report at the spring 2000 session of the Commission, the Special Rapporteur will once again update the Commission on developments within FRY, focusing on new information from Kosovo and including results of any additional missions.

B. Humanitarian and economic crisis

71. International efforts to avert the looming humanitarian crisis caused by the destruction of the FRY's civilian infrastructure, including energy sources for heating, have been for the most part limited and politicized. After days of delay at the FRY border, the first fuel trucks in the European Union's "Energy for Democracy" programme headed on 7 December 1999 for the opposition-controlled cities of Nis and Pirot. Fuel shortages continued throughout FRY, disrupting food and water supplies and preventing the operation of essential equipment in institutions. Humanitarian agencies feared increased morbidity and mortality of the most vulnerable, particularly refugees, IDPs, the disabled, children, the chronically ill, urban elderly and social cases.

72. The FRY population has also faced increasing economic hardship, generated in part by the country's long-term economic decline and lack of reform, and worsened as a result of sanctions imposed for its role in regional conflicts and the extensive damage to infrastructure and industry caused by the NATO air campaign. Unemployment is officially near 40 per cent, but hidden unemployment brings the figure much higher. Inflation in late 1999 dramatically increased: the value of the dinar decreased by more than half from 1 October to the end of November, although the official rate of exchange remained unchanged for many months. Workers from one division of Kragujevac's damaged Zastava factory demonstrated every day for weeks: in 1989 their average monthly salary was DM 1,400 and today it is DM 60. Pensions and salary payments have been in arrears for months, although the Republic of Montenegro has fared better than the Republic of Serbia in issuing more timely and larger pension payments. A system for paying pensions and other social entitlements to persons in Kosovo has not been established. Calling for stabilization measures, the Government of Montenegro introduced the Deutsche mark as legal tender and pegged dinar prices against the real value of the mark. The move stabilized salaries, but the cost of consumer staples subsidized against the official dinar rate rose significantly. In Belgrade, the Government of Serbia reacted by cutting off nearly all financial transactions with Montenegro and imposing an intermittent "customs" ban on goods entering Montenegro from Serbia. In Kosovo, UNMIK declared the mark as the Kosovo currency in late summer.

73. FRY's external sanctions and internal financial difficulties pose a special challenge to international humanitarian and reconstruction operations within the country. The sanctions regime has been eased against the Republic of Montenegro, although officials there told OHCHR that most of the international community's pledges of increased trade and investment have yet to be realized. Sanctions have been lifted against Kosovo, but other factors in that region have complicated and impeded the progress of social and economic rights. Implementation of internationally financed reconstruction pledges, particularly of infrastructure, have not kept pace with private initiatives financed by the Kosovo Albanians themselves. At the same time, international business interests vie for concessions and elements of the Kosovo commercial and reconstruction market. While military vehicles of the international security force (KFOR) grind down what was left of Kosovo's roads, UNMIK's European Union "pillar" must raise funds for

community road repair projects. (Where bridge traffic is concerned, KFOR engineers have created short-term solutions and, in some cases, fully repaired structures.) Much of Kosovo remains without utilities, communications, or social or physical infrastructure, and many Kosovo Albanians, especially in villages, have used family funds to repair homes and small businesses.

C. Freedom of the media and access to information

74. Incidents of violations of freedom of expression have increased throughout FRY, particularly in the Republic of Serbia. In Belgrade and in Pristina, selected media have embarked on crusades against independent journalists, "traitors" and "enemies". Consumer access to a range of information is severely restricted in several additional ways, increasingly through technical obstruction (i.e. jamming).

75. The Special Rapporteur notes in particular the case of Nebojse Ristic, the editor of Sokobanja's local "TV Soko", sentenced this spring to one year in prison for the criminal charge of "spreading false news". The charges against Mr. Ristic were based on his having fixed two posters inside his office, one the symbol of the student "Resistance" movement, another proclaiming "Free media". In convicting Mr. Ristic, the district court cited among its reasons that he had "undermined public confidence in State institutions", a provision of the Criminal Code invalidated by the Constitutional Court of Serbia in 1991. The charge of "spreading false news" was originally modelled in Yugoslav law after article 58 of the Soviet Criminal Code, which provided for imprisonment for "lesser hostile propaganda". Excised from Yugoslav federal law in 1990, the provision remained within republic law but was not applied until recent months, and now is being applied in a growing number of criminal prosecutions in Serbia.

76. The Serbian Law on Public Information remains in force, and proceedings continue against journalists, editors and others in independent media and NGOs. The Special Rapporteur commends the media watchdog efforts of the independent ANEM network and its partners in Serbia. So many violations of freedom of expression and obstructions to free media have occurred throughout Serbia in the past two months that this report is insufficient to list them. The printing house which publishes the independent daily Glas javnosti, weeklies Vreme and NIN, and occasionally the bulletins and leaflets of the Alliance for Change has been the object of attack. Fined millions of dinars, ABC Grafika has been subjected to nearly 70 separate charges brought by government officials and others, its owner/manager has been repeatedly detained and questioned, and his car was set on fire by unknown persons outside his publishing house. Glas javnosti has been fined 4.3 million dinars since the passage of the Law on Public Information. Serbian Deputy Prime Minister Vojislav Seselj sued the Danas newspaper in October for reporting a statement of Montenegrin Deputy Prime Minister Novak Kilibarda. It did not affect the court's verdict that Mr. Kilibarda confirmed in writing that his statement was reported accurately. Danas was fined 280,000 dinars. Other independent newspapers were fined in the fall: Vojvodina's Kikindske novine, for reporting on the proceedings directed against it; Niske novine, for reporting the salaries of local tobacco factory management, all of whom are members of Serbia's ruling coalition parties; Belgrade's Nedeljni telegraf, for reporting on a scandal in Serbia's biggest shipping company. In November, a journalist from a Sandzak magazine received a decision of the Supreme Court of Serbia, dated 12 December 1998, confirming a 1992 decision ordering a three-month jail sentence for slandering Serbian President Slobodan Milosevic.

77. Selective jamming or signal interference in Serbia has been directed at news programming. During the Special Rapporteur's October 1999 visit, he was able to observe regular obstructions, during prime-time news hours, of the broadcasts of the Belgrade station "Studio B", a local television channel controlled by an opposition party. Radio B-92 and Radio Index are also selectively jammed. OHCHR has observed that the satellite programme of the Republic of Montenegro is jammed in Belgrade a few moments after that programme starts its news broadcast. After September's arbitrary seizure at the border of one issue of the Banja Luka independent Reporter, authorities revoked the magazine's Serbian distribution permit in mid-October.

78. In addition to existing KFOR news services, UNMIK recently began its own Kosovo-produced radio programming in the Albanian and Serbian languages. Access to local television remains an unresolved issue. Kosovo's independent "Radio Kontakt", which was banned by Serbian authorities in July 1998, reopened in November, the station has already had to appeal to international authorities for protection of its multiethnic Albanian, Serb and Turkish staff from harassment and threats from Kosovo Albanian extremists. Although some Albanian-language dailies and weeklies have resumed (or started) publication in Kosovo, the number of publications available in Kosovo, the range of information and opinion available, and the penetration of information outside Kosovo's larger cities, including options for personal communications, have all decreased from their levels of one year ago. Inter-city telephone connections have not yet been fully re-established, further fractionalizing communications and access to information within the region.

79. Citing the lack of republic-level permits, Montenegrin authorities in late October shut down the broadcasts of "Radio Fri Montenegro" and radio "D", stations often critical of the policies of Montenegrin president Milo Djukanovic. Closing of the stations coincided with the hottest period of public debate over negotiations between Belgrade and Podgorica on a Montenegrin proposal to alter the nature of federal relations. One has reopened. "Radio Fri Montenegro", which had been remiss in filing technical documents, was reopened on a different frequency after approximately one month and given 30 days by republic authorities to complete documentation that would legalize its operations under Montenegrin law. Radio "D", identified with support for the policies of federal President Slobodan Milosevic, has received from Belgrade authorities all permits required for operation under federal law but has not fulfilled requirements at the level of the Montenegrin republic. In response to an OHCHR inquiry, the Montenegrin Secretariat for Information indicated that Radio "D" could reopen as soon as the station submitted an official request for frequency allocation to republic authorities.

D. Detention and missing persons

80. Throughout FRY, criminal proceedings are in progress on a number of charges with serious implications for human rights. OHCHR directly monitors these trials, with the presence of monitors in courtrooms and visits to places of detention facilitated by the ministries of justice of Serbia and Montenegro. The number of proceedings is so great that a network of non-governmental organizations, legal practitioners, diplomatic observers, concerned individuals and media has coalesced to monitor trials and support the rule of law. The Special Rapporteur has grave reservations about the conduct of many proceedings which his interlocutors have

monitored in Serbia. He nevertheless welcomes growing civic involvement in monitoring judicial administration, cooperation of civilian authorities with monitors, and the precedent of non-governmental representatives visiting detainees.

81. Criminal proceedings against Kosovo Albanians transferred from detention centres in Kosovo in mid-June continue throughout Serbia. ICRC continues to visit centres to register detainees in the custody of the Ministry of Justice. At this writing, neither the "parallel administration" in Kosovo nor former commanders of the Kosovo Liberation Army have facilitated access by ICRC or OHCHR, family members, or advocates to persons, primarily of Serb ethnicity, deprived of liberty on the territory of Kosovo by armed Kosovo Albanians, nor have they provided information that could suggest the whereabouts of such persons. The Yugoslav army has so far not permitted ICRC to register those persons detained in Kosovo by military authorities. Unless an individual originally detained by the military has passed into the custody of civilian authorities (and there have been many such cases), federal and Serbian government officials have produced no indications of the existence of such persons, with the exception of individuals publicly reported to have been detained by the Yugoslav army before March 1999. Thus, the overall number of detainees remains unknown and is based on the tracing requests of family members and statements of witnesses to detention. Non-governmental organizations have indicated that several thousand missing persons remain unaccounted for, among them Serbian-speaking Muslims/Bosniaks, who increasingly lack advocates in Kosovo. At the same time, UNMIK has initiated a procedure to identify the nearly 2,000 as-yet-unidentified individuals exhumed in the course of investigations conducted by ICTY and other unidentified bodies discovered in Kosovo. Complementing the work of the community-based Commission on Prisoners and Detainees, established in September 1999 and chaired by OHCHR, UNMIK is establishing a community-based Victim Recovery and Identification Commission.

E. Rule of law: right to a fair trial

82. Of those Kosovo Albanian detainees in the custody of civilian authorities, many have been held for months without being brought before an investigating judge. Most are tried on federal charges of alleged terrorism, or aiding and abetting terrorism, but OHCHR has noted the reappearance of lesser, republic-level charges of illegal weapons possession for the first time since early 1998. Most notably, in the court of Prokuplje, attorney-monitors have observed serious and repeated violations of procedure in the proceedings, the absence of evidence or witnesses, and refusal of judges to consider objections or queries of defence counsel. Judges have ignored defendants' allegations of ill-treatment or statements made under duress. Most of those tried so far have been sentenced, but a recent trial in the Leskovac court resulted in the release of 14 persons.

83. On 2 December, the Serbian Ministry of Justice provided OHCHR with a list of persons of Albanian ethnicity released from detention centres in Serbia since 25 June 1998. Of the 312 persons listed, 73 were described as released in November on the basis of court decisions ending pre-trial or investigative detention; 166 were released to ICRC in June; 54 were released to ICRC in October, and 19 were juveniles in various stages of court proceedings released as a gesture of good-will. Of those on the list, one 47-year-old died within a few days of release, after leaving a testimony describing ill-treatment, torture and starvation during his detention in

Andrijevica, a military prison, and during his transfers to Leskovac and Zajecar. The victim noted in his testimony that conditions in Zajecar prison improved in September. His story conforms with statements made by released prisoners to OHCHR.

84. KFOR has detained 14 persons (11 Serbs and 3 Roma) from Orahovac on domestic charges of "war crimes". Other Serbs have been detained by order of the court in Kosovska Mitrovica on suspicion of having committed crimes against humanity, among them a 16-year-old boy. All are pending investigation before UNMIK's newly constituted Kosovo judiciary. While persons suspected of crimes against humanity should be brought to justice, the Special Rapporteur is concerned whether a fair trial is possible in the highly charged and volatile atmosphere.

85. The Special Rapporteur believes that an important step towards rebuilding confidence in Sandzak would be for the Serbian and Yugoslav authorities to investigate the atrocities that took place in the region in the war years 1992-1994. For three years, the Republic of Montenegro has conducted criminal proceedings against Mr. Nebojse Ranisavljevic for alleged crimes against humanity in connection with the abductions and killings in Strpci. It has been over one year since the last court hearing in the case, itself postponed so that the court in Bijelo Polje could establish whether a mechanism existed for cooperation with the authorities in the Republika Srpska in carrying out an on-site reconstruction. At that hearing, Mr. Ranisavljevic testified that his original statement while in police detention had been made under torture. Mr. Ranisavljevic has now been in investigative detention in Montenegro for nearly three years and no further hearing is scheduled. At the same time, the abductions of mainly Muslim civilians in Strpci, Mioce, Bukovica, Sjeverin and other places in 1992-1993 have not been properly investigated by any international or judicial body, nor have the families of the victims received any compensation for the suffering and losses they endured.

F. Rule of law - freedom of association

86. Other prosecutions in Serbia deserve special note, as criminal proceedings have been brought against persons who organized or participated in demonstrations held throughout Serbia. After a series of misdemeanour proceedings, for which he already served a prison sentence, Leskovac TV technician Ivan Novkovic is now on trial for the criminal offence of "misusing an official post". A taped message by Mr. Novkovic inserted in TV coverage of a basketball game in summer 1999 brought 20,000 people onto the streets of Leskovac, spontaneously expressing general frustration, and more onto the streets on successive occasions to protest his prosecution. Bogoljub Arsenijevic Maki, artist, writer, and leader of Valjevo's "Civic Resistance", was sentenced to three years' imprisonment for allegedly preventing police officers from carrying out their duties during the "against authority and against the opposition" protests in Valjevo in June 1999. Mr. Arsenijevic was badly beaten by police while being taken into custody. In Smederevo in late November, activists in the student movement "Resistance" were arrested, then ill-treated in police custody, after having built a "bridge" out of posters of President Slobodan Milosevic during a demonstration of the Alliance for Change. The students were released, pending trial, as were the Alliance for Change demonstrators who were detained by police when they went to protest the arrest of the students.

G. Refugees and IDPs

87. Since the violent outbreak of the Kosovo crisis in February 1998, international political attention has been diverted from the return of refugees to Croatia and Bosnia and Herzegovina. At the same time, the international community has not reacted with sufficient humanitarian assistance to support refugees and IDPs in FRY. Returns to Croatia, in particular, have been exceedingly slow. Individual returns have been more successful than organized returns. The situation of IDPs from Kosovo remains volatile, as aid is scarce, political attention to their needs is minimal, and there are strong indications of anger and frustration among the IDP community. In several cities, Kosovo IDPs have taken over vacation or unfinished flats.

H. Citizenship and amnesty in Montenegro

88. After protracted debate, the assembly of the Republic of Montenegro adopted a law on Montenegrin citizenship. The law gives primacy to internal republic citizenship over federal Yugoslav citizenship. By requiring 10 years' continuous residence in Montenegro, the law effectively prevents refugees and displaced persons from obtaining Montenegrin citizenship and divides the population of Montenegro into two groups: those who have Montenegrin citizenship and those who do not, even though all have the citizenship of FRY. Thus, it creates conditions for discriminating against those persons who, although permanent residents of Montenegro and Yugoslav citizens, do not have republican citizenship; potential areas of discrimination are tax obligations, right to work in public enterprises and political rights, such as the right to vote for local political bodies.

89. The assembly of the Republic of Montenegro passed an amnesty law affecting military deserters during the NATO air campaign. Under the Constitution, passage of an amnesty law falls within the jurisdiction of the federal assembly. However, since the Government of Montenegro holds that the current composition of the federal assembly is itself unconstitutional, the assembly took unto itself the constitutional right to issue an amnesty. By doing so, Montenegro became a potential place of asylum for many thousands of persons who refused military service.

I. Concluding observations

90. With grave concern, the Special Rapporteur offers early warning of growing threats in FRY.

91. In Kosovo, the ethnic cleansing of Serbs and "undesirable" non-Albanians is being followed by threats, intimidation and episodic acts of violence directed against Albanians who do not share the views of the "parallel administration" controlled by the KLA. In recent weeks, OHCHR has also noted new abductions of Montenegrin citizens from parts of Montenegro that border Kosovo; the body of one of the kidnapped was found in Kosovo.

92. At the close of the Special Rapporteur's October mission, four members of the entourage and family of Serbian opposition leader Vuk Draskovic were killed on an isolated highway by a mysterious truck which barely missed Mr. Draskovic himself.

93. On the afternoon of 3 December 1999, after conducting a regular visit to clients detained in Sremska Mitrovica, attorney Teki Bokshi and two colleagues were stopped on the highway to Belgrade by three plainclothes officers travelling in an official Ministry of Interior vehicle. When the officers demanded Mr. Bokshi's identity documents, he explained that he had left them in the Belgrade hotel where he was registered and showed them his attorney's credentials. The officers took Mr. Bokshi with them, indicating that they would accompany him to the hotel to pick up his identity documents, and ordered the two other attorneys to wait in their vehicle, the keys to which the officers retained. One day later, Mr. Bokshi called an attorney from custody, but could not explain his whereabouts or the reason for his detention. At this writing, Mr. Bokshi has been in arbitrary detention for six days.

94. On 7 December, human rights activist Dobroslav Nesic was summoned to the State Security Service in Leskovac, where he was detained for 2½ hours for an "informative talk". During the talk State Security officials informed Mr. Nesic that if he continued with his activities, he would be killed. Mr. Nesic, imprisoned earlier this year under the Serbian Law on Public Information, is President of the Citizens Assembly of Serbia. The day before his conversation with State Security officials, all the tyres on his car were slashed.

95. On thoroughfares throughout central Serbia, inside cities, even in residential neighbourhoods Serbian police have set up checkpoints on the model of the checkpoints that characterized Kosovo and Metohija during the past 10 years. OHCHR now receives several reports per week of harassment, searches, and even confiscation of goods and personal funds at police checkpoints in Serbia.

J. Recommendations

96. The Special Rapporteur reiterates the recommendations made in previous reports, most recently in his report and addendum thereto to the General Assembly. To those, he adds the following.

97. The Government of FRY, including the republic authorities of Serbia and Montenegro, should permit access by OHCHR and ICRC to all places of detention, including to all persons detained by military forces. Similarly, all court proceedings, including those held in military courts, should be accessible to monitors. In the territory under UNMIK administration, access should also be granted to detainees and proceedings held in the jurisdiction of KFOR or UNMIK, and to all persons who may be detained by parties or entities.

98. All persons detained in connection with the crisis in Kosovo, with the exception of persons suspected of serious violations of international humanitarian law, should be released.

99. The Government of FRY, including the republic authorities of Serbia and Montenegro, should improve its performance in the area of the administration of justice in accordance with international standards of due process and fair trial. The same recommendation applies also to judicial bodies appointed by UNMIK.

100. The Government of FRY, including the republic authorities of Serbia and Montenegro, should end torture and ill-treatment of those in prisons and other detention facilities and bring perpetrators to justice. Wherever persons are detained on the territory of FRY, their rights should be respected according to international standards.

101. The Government of FRY, including the republic authorities of Serbia and Montenegro, should expand, not restrict, the competence of local government bodies to permit local decision-making on issues of concern to the local population, particularly including national minorities.

102. The Government of FRY, including the republic authorities of Serbia and Montenegro, should ensure that, particularly in areas with significant minority populations, national minorities are fairly represented in all government departments, including in positions of authority, and particularly in the police, judiciary, medical and social services, and education. The same recommendation applies also to territory under the administration of UNMIK.

103. The Government of FRY, including the republic authorities of Serbia and Montenegro, should pay particular attention to the social and economic rights of the most vulnerable sections of society, such as the elderly, the disabled and children. The same recommendation applies also to territory under the administration of UNMIK.

104. The Government of FRY should agree to the formal establishment of OHCHR suboffices in Pristina and Podgorica. The Government of the Republic of Serbia should repeal the Law on Public Information and the Law on Universities. UNMIK should adopt a "rules of the road" protocol with ICTY regarding domestic war-crimes prosecutions.

105. UNMIK and KFOR should investigate reports of trafficking of women and children from Kosovo.

106. The international community should cease isolating the people of FRY. In the vacuum of multilateral politics, bilateral civil society connections should multiply. Non-governmental organizations in countries outside FRY should locate and establish links with counterparts inside FRY. Municipalities should establish "twin city" programmes. Universities and academic institutes outside FRY should promote grants, teaching fellowships and visiting lectureships for Serbian professors forced into unemployment by the Law on Universities.